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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|-----------------|-------------|----------------------|----------------------|------------------|
| 10/664,709      | 09/17/2003  | Juliana O'Niell      | A35997 - 074915.0101 | 4384             |

21003 7590 03/03/2004

BAKER & BOTTS  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER

NGUYEN, SON T

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3643

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/664,709             | O'NIELL, JULIANA    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Son T. Nguyen          | 3643                |  |

*CPB*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

*Son T. Nguyen*  
*Per Exam 3643*

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/17/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Information Disclosure Statement*

1. Patent # 340552 on form PTO-1449 is not considered by the Examiner because it is a tea pot, which is non-analogous art to the present invention.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3962993 (herein 993) in view of US 3985102 (herein 102).

For claim 1, 993 discloses a shelter for a pet comprising: an enclosure 10 sized for a pet, said enclosure including an interior space 13 having at least one wall 28 separating said interior space from exterior space and at least one opening 25 for ingress and egress to said interior space; a cooler mounted in said at least one wall 28. However, 993 is silent about a thermoelectric cooler; a first grill spaced from said wall having said cooler and separating said cooler from said interior space; and a second grill spaced from said wall having said cooler and separating said cooler from exterior space.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a thermoelectric cooler in place of the cooler/fan of 993 for such device is notoriously known in the art for cooling an enclosure.

102 teaches an animal enclosure 1 comprising a first grill 11b spaced from a wall 11a having a cooler/fan 6 and separating said cooler/fan from an interior space; and a second grill 18 spaced from said wall having said cooler/fan and separating said cooler/fan from exterior space. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ first and second grills as taught by 102 in the shelter of 993 in order to protect the animal inside from the cooler/fan/ equipment and to protect the equipment inside from the environment outside.

For claim 2, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include thermal insulation separating said interior space from exterior space in the shelter of 993 as modified by 102, since it is notoriously well known in the art that an enclosure or housing for animals has insulation to maintain the temperature within the enclosure.

For claim 3, 993 as modified by 102 (emphasis on 993) further discloses wherein said opening 25 is closed by a flexible closure 26.

For claim 4, 993 as modified by 102 (emphasis on 993) further discloses wherein said flexible closure comprises strips of plastic material attached above said opening and extending by gravity to close said opening (col. 2, lines 58-63).

For claims 5 & 6, in addition to the above, 102 further discloses the cooler/fan can be mounted on wall 11a supported on walls 10 (and the wall right below 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a wall to support the cooler/fan with another wall as taught by 102

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in the shelter of 993 as modified by 102 in order to further support the cooler/fan system and to allow different mounting arrange.

For claims 7 & 8, 993 as modified by 102 does not specifically claim a cooler type with heat convector fins, fan spaced from the fins, etc. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ various type of cooler, i.e. one which includes heat convector fins and fan spaced from the fins, in the shelter of 993 as modified by 102, since cooler of different types are known and to select which one to use would be up to one's choice to do so for his/her best intended use base on factors such as cost, availability, weight, etc.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen  
Primary Examiner, GAU 3643  
March 1, 2004